tive condition of the streets of a municipal corporation, the cases appear to be fairly uniform in the application of the law. The city is liable where the plaintiff is injured by a defective sidewalk, which the city was bound to repair. *Colby* v. *City of Beaver Dam*, 34 Wis. 285 (1874); *City of Chicago* v. *Keefe*, 114 Ill. 222, 2 N. E. 267, 55 Am. Rep. 860 (1885). And the city is bound to keep its streets free from dangerous obstructions. Thus, the city is liable where an abutting owner leaves a counter inclined against a building on the sidewalk, and after about five days, children playing around the counter cause it to fall and kill a child. *Kunz* v. *City of Troy*, 16 N. Y. St. Rep. 459, 1 N. Y. Supp. 596 (1888). The city is liable where it allows a temporary platform to be erected in the street for a show and a person is injured thereby. *City of Richmond* v. *Smith*, 101 Va. 161, 43 S. E. 345 (1903). The city is liable where a billboard is left on the sidewalk for some time and the wind blows it over, injuring a pedestrian. *Cason* v. *City of Ottumwa*, 102 Iowa 99, 71 N. W. 192 (1897). And where injuries occur to travellers from boxes left on the street during a day and night the city is liable. *Mayor of Birmingham* v. *Tayloe*, 105 Ala. 170, 16 So. 576 (1894); *City of Galesburg* v. *Higley*, 61 Ill. 287 (1871). The city is held to the same liability where it permits building materials to be placed on its sidewalks or streets for private construction, without proper warning of the obstruction to travellers. *Blocher* v. *Dieco*, 30 Ky. L. Rep. 689, 99 S. W. 606 (1907); *City of La Porte* v. *Henry*, 41 Ind. App. 197, 83 N. E. 655 (1908); *Apker* v. *City of Hoquiam*, 51 Wash. 567, 99 Pac. 746 (1909).

The city must, however, have notice of the defective or unsate condition of its streets or sidewalks before it can be held liable for accidents occurring thereon; but notice may be constructive, as well as actual, depending upon the peculiar circumstances of each case. When the obstruction has been on the street so long that notice may be reasonably inferred, or is one which by reasonable care should have been ascertained and remedied, the city is liable. *Evansville* v. *Senhenn*, 151 Ind. 42, 47 N. E. 634, 51 N. E. 88, 41 L. R. A. 728, 68 Am. St. Rep. 218 (1898); *Kunz* v. *City of Troy*, *supra*; *Union Street R. Co.* v. *Stone*, 54 Kan. 83, 37 Pac. 1012 (1894); *District of Columbia* v. *Woodbury*, 136 U. S. 450 (1890).

And a city, while bound to use a reasonable degree of skill and diligence in making its streets safe and convenient for the public travel, is not an insurer as to the safety of travellers upon its streets. *Ring* v. *City of Cohoes*, 77 N. Y. 83, 33 Am. Rep. 574 (1879); *City of Ludlow* v. *De Vinney*, 185 Ky. 316, 215 S. W. 45 (1919); *City of Richmond* v. *Rose*, 127 Va. 772, 102 S. E. 561 (1920).

The principal case appears to be in line with the great weight of authority in this country.

PRINCIPAL AND SURETY—CONTRIBUTION BETWEEN CO-SURETIES—RECOGNIZED IN COURTS OF LAW.—The plaintiff bound himself jointly and severally with the defendant and the defendant's son as surety for a loan by a bank to the defendant's lumber company. The company became bankrupt and the son insolvent. The bank then brought action against the plaintiff for the full amount of the loan in satisfaction of which plain-

tiff paid his proportion in cash and gave his note for the balance, which was accepted by the bank. This action was brought to recover from the defendant one-half of the total amount of the original loan. The defendant contended that the plaintiff was not entitled to recover, for the reason that the debt had not been wholly paid when the action was brought. *Held*, plaintiff could not recover. *Fox* v. *Corry* (La.), 89 So. 410 (1921).

The right of contribution among co-sureties is not founded on contract, but results from the general principles of equity which equalizes burdens that two or more may be called upon to bear. *Russell* v. *Failor*, 1 Ohio St. 327, 59 Am. Dec. 631 (1853); *Dering* v. *Winchelsea*, 1 Cox. 318, 29 Eng. Rep. R. 1184; *id.* 2 B. & P. 270, 126 Eng. Rep. R. 1276 (1787); *Weaver-Dowdy Co.* v. *Brewer*, 127 Ark. 462, 192 S. W. 902 (1917). Although originating in equity this equitable principle has been adopted by the common law by implying a promise from each co-surety to reimburse each of the others for any payment in excess of his proportion. *Water's Repr.* v. *Riley's Admr.*, 2 Har. & G. (Md.) 305, 18 Am. Dec. 302 (1828); *Craythorne* v. *Swinburne*, 14 Ves. 160, 33 Eng. Rep. R. 482 (1807); *Dillenbeck* v. *Dygert*, 97 N. Y. 303, 49 Am. Rep. 525 (1884). By the weight of authority, the right to bring an action of assumpsit is consequent on the legal payment of the debt, and no allegation or proof of the insolvency of the principal is necessary in order to recover. *Roberts* v. *Adams*, 6 Porter (Ala.) 361, 31 Am. Dec. 694 (1838); *Gowell* v. *Edwards*, 2 B. & P. 269, 126 Eng. Rep. R. 1275 (1800); *contra*, *Morrison* v. *Poyntz*, 7 Dana (Ky.), 307, 32 Am. Dec. 92 (1838), and note. The rule is otherwise in equity. *Preston* v. *Preston*, 4 Gratt. (Va.) 88, 47 Am. Dec. 717 (1847).

The right to contribution at law is limited to an aliquot part of the debt determined according to the whole number of co-sureties, solvent or insolvent, but in equity the recovery is based on a pro rata amount of the sum paid, excluding insolvent co-sureties. *Brigden* v. *Cheever*, 10 Mass. 450 (1813); *Cowell* v. *Edwards*, *supra*; *Robertson* v. *Maxcey*, 6 Dana (Ky.) 101 (1838); *Weaver-Dowdy Co.* v. *Brewer*, *supra*. In several jurisdictions, however, at law the contribution is based on the number of solvent sureties. *Mills* v. *Hyde*, 19 Vt. 59, 46 Am. Dec. 177 (1846); *Smith* v. *Mason*, 44 Neb. 610, 63 N. W. 41 (1895).

As a general rule a surety is entitled to contribution whenever, but not until, he can show that he has paid more than his proportionate share of the debt of the principal. *Camp* v. *Bostwick*, 20 Ohio St. 337, 5 Am. Rep. 669 (1870); *Davies* v. *Humphreys*, 6 M. & W. 153, 151 Eng. Rep. R. 361 (1840); *First Nat'l. Bank* v. *Mayr* (Ind.), 127 N. E. 7 (1920). But if payment of less than his proportionate share discharges the whole debt as to himself and his co-sureties, he will be entitled to contribution. *Peter* (*Werborn's Admr.*) v. *Kahn*, 93 Ala. 201, 9 So. 729 (1891). Usually anything whereby the co-surety's liability is discharged constitutes payment. *Fanning* v. *Murphy*, 126 Wis. 538, 105 N. W. 1056, 110 Am. St. Rep. 946, 4 L. R. A. (N. S.) 666 (1906). Payment may be made in land or a mortgage thereon. *Sloan* v. *Gibbes*, 56 S. C. 480, 35 S. E. 408, 76 Am. St. Rep. 559 (1900); *Frost* v. *Tracy*, 52 Mo. App. 308 (1892).

And it is immaterial that the mortgage is unpaid. *Robertson* v. *Maxcey, supra.* Payment by means of commercial paper, if received by the creditor as such, is sufficient to entitle the surety to contribution. *Sloan* v. *Gibbes, supra; Pinkston* v. *Taliaferro,* 9 Ala. 547 (1846); *Ryan* v. *Krusor,* 76 Mo. App. 496 (1898); 1 BRANDT ON SURETYSHIP (2nd. ed.), § 285. And this is true even though such paper has not been paid by the surety giving it. *Smith* v. *Mason, supra; Stubbins* v. *Mitchell,* 82 Ky. 535, 6 Ky. Law Rep. 491 (1885); *contra, Brisendine* v. *Martin,* 23 N. C. 286 (1840). It would seem, therefore, that the instant case follows the minority view on this question. It is submitted that the majority view is based on sounder reason.

In Virginia the law seems well settled in regard to the main points stated above. *Pace* v. *Pace,* 95 Va. 792, 30 S. E. 361, 44 L. R. A. 459 (1898); *Conrad* v. *Smith,* 91 Va. 292, 21 S. E. 501 (1895); *Gordon* v. *Rixey,* 86 Va. 853, 11 S. E. 562 (1890); *Rosenbaum* v. *Goodman,* 78 Va. 121 (1883). And see article by E. C. Burks, 9 VA. LAW JOURN. 5 (1885).

RIGHT OF WOMEN TO SERVE AS JURORS—EFFECT OF NINETEENTH AMENDMENT UPON.—After the adoption of the Nineteenth Amendment to the Constitution of the United States, defendant, a white man, was convicted of murder in the first degree. He appealed on the ground that there were no women on the jury which tried him. The Constitution and laws of New Jersey are silent on the question of the eligibility of women for jury service. *Held,* women not eligible for jury duty; judgment affirmed. *State* v. *James* (N. J. Law), 114 Atl. 553 (1921).

Before the adoption of the Nineteenth Amendment it was well settled that the term "trial by jury" as used in the Constitution of the United States meant trial by such a jury as the common law recognized, viz., a jury composed of twelve men. *Commonwealth* v. *Dorsey,* 103 Mass. 412 (1869); *Capital Traction Co.* v. *Hof,* 174 U. S. 1 (1898). See 3 Bl. Com. 362. But this does not mean that the power of the legislature to alter the qualifications for jurors is in any way trammeled. On the other hand, it has been consistently held that the legislature has power to prescribe qualifications for jurors even though they may differ from the common law requisites above referred to. *People* v. *Harding,* 53 Mich. 481, 19 N. W. 155, 51 Am. Rep. 95 (1884); *People* v. *Barltz* (Mich.), 180 N. W. 423, 12 A. L. R. 520 (1920); See 24 Cyc. 187. For example, it is a proper exercise of legislative authority to authorize women to serve as jurors in the face of a constitutional provision that trial by jury shall remain inviolate. *Ex Parte Mana,* 178 Cal. 213, 172 Pac. 986, L. R. A. 1918E, 771 (1918).

But the precise point we are discussing is whether, without such change by the legislature, the amendment giving suffrage to women *ipso facto* qualifies them for jury service. Obviously this question is to be answered by determining whether or not the right to vote implies the right to serve as juror. The Wyoming Supreme Court has said in as many words that it does not. *McKinney* v. *State,* 3 Wyo. 719, 30 Pac. 293, 16 L. R. A. 710 (1892). In New York it has been held that there is no connection between suffrage and jury service, and that a